IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8763 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NURMAHMAD FAKIRMAHMAD MAKRANI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8763 of 2003

MR BD KARIA for Petitioner No. 1

MR HL JANI, AGP.for Respondent No. 1-2

..... for Respondent No. 3,3/3/1,3/5

MR PRASHANT G DESAI for Respondent No. 3/1-3/3,3/3/2-3/4,3/6

CORAM : HON'BLE MR.JUSTICE D.A.MEHTA

Date of decision: 10/11/2003

ORAL JUDGEMENT

1 Rule.Mr.H.L.Jani waives service for respondent nos. 1 and 2 and Mr.Prashant G.Desai for respondent nos. 3/1 to 3/6. By consent of the parties the matter is taken up for final disposal today.

2 This petition has been filed under Articles 226 and 227 of the Constitution of India seeking the following relief :

"(A) Issue a writ of Certiorari or any other Writ or Order or Direction quashing and setting aside the judgment and order dated 12.8.2002 passed by the Gujarat Revenue Tribunal in Appeal No.TEN/AA/49/93 and also the impugned order dated 8.7.1993 passed by the Collector in Revision Case No.LB/Revision/119/91;"

3 The dispute between the parties relates to land bearing City Survey No.3871 within the limits of Dehgam town. It is the case of the petitioner that the said lands were held by his ancestors. It appears that respondent no.3 laid his claim on the said land and the same came to be accepted by the City Survey Inquiry Officer. The petitioner challenged the same before the Assistant Collector, Viramgam prant who by his order dated 6.7.1991 set aside the order of City Survey Inquiry Officer. Being aggrieved, the matter was carried in appeal before the Collector by respondent no.3. The Collector allowed the said appeal by his order dated 8.7.1993. The petiioner preferred an appeal before the Gujarat Revenue Tribunal (the Tribunal). During the pendency of the appeal before the Tribunal respondent no.3 expired and hence the petitioner preferred an application seeking to join legal heirs being respondent nos. 3/1 to 3/6. The Tribunal decided the appeal on 12.8.2002. It is the case of the petitioner that the appeal was fixed by the Tribunal on 3.7.2002 but as the same was not communicated to the petitioner, the petitioner could not attend on the date fixed for hearing and hence, the Tribunal decided the appeal in absence of the petitioner.

4 Heard Mr.B.D.Karia, learned Advocate for the petitioner, Mr.H.L.Jani, learned Assistant Government Pleader for respondent nos. 1 and 2 and Mr.Prashant G.Desai, learned Advocate for respondent nos. 3/1 to 3/6. It is apparent that the Tribunal has decided the matter under mistaken notion in as much as it has proceeded on the footing that the appeal was filed against a dead person and, hence, the Tribunal has, without entering into the merits of the matter rejected the appeal.

5 The petitioner had in its written submissions

dated 2.1.2002 specifically vide para 4 drawn the attention of the Tribunal that respondent late Mustafakhan Mahmadkhan Pathan had expired on 11.11.1992 and, hence, the order dated 8.7.1993 made by the Collector was null and void. Despite this specific ground taken in the written submission filed before the Tribunal, the Tribunal has failed to consider the same and as a consequence passed the impugned order.

6 In light of the aforesaid fact situation, Mr.Desai submitted that if the petitioner had failed in placing proper facts before the proper authority, the petitioner must not be given second innings at this stage. It is not possible to accept the aforesaid contention raised on behalf of respondent nos. 3/1 to 3/6, because as stated hereinbefore, the factum of late Mustafakhan having expired on 11.11.1992 had already been placed before the Tribunal and the Tribunal was invited to hold that the order passed by the Collector on 8.7.1993 was a nullity in law, the same having been passed in the name of a dead person. As the Tribunal has failed to deal with this aspect of the matter which goes to the root of the controversy between the parties, the impugned order of the Tribunal dated 12.8.2002 (Annexure 'I') is hereby quashed and set aside. The matter is remanded to the Tribunal for deciding the same on merits in accordance with law. Rule made absolute. There shall be no order as to costs.

(D.A.Mehta, J)

m.m.bhatt